

remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

**41. Survival**

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

**42. Succession**

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

**43. Notification**

- A. If one party is required to give notice to the other under the Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. Delivery may be by certified United States mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. All notices shall be addressed as follows:

**To MMD:**

Department of Administration  
Materials Management Division  
Bernadette Kopischke, CPPB  
Acquisition Management Specialist  
50 Sherburne Avenue  
112 State Administration Building  
St. Paul, MN 55155  
Fax: 651.297.3996  
Email: bernie.kopischke@state.mn.us

**To Contractor:**

Dell Marketing L.P.  
Attn: NASPO/WSCA Program Manager (Public Sector Contracts)  
One Dell Way, Box 8707  
Round Rock, TX 78682

- B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 44. The carrier for mail delivery and notices shall be the agent of the sender.

**44. Reporting and Fees**

**A. Administration Reporting and Fees**

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtotaled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.
3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

**B. Participating Entity Reports and Fees**

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

**45. Default and Remedies**

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
  1. Consistent nonperformance of contractual requirements; or
  2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

- C. If the default remains after the opportunity for cure, the non-defaulting party may:
1. Exercise any remedy provided by law or equity;
  2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
  3. Impose liquidated damages as mutually agreed by the parties, as specified in an Amendment to a Participating Addendum;
  4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within the Participating Entity's jurisdiction.

**46. Audits**

- A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.
- B. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

**47. Extensions**

If specifically authorized by provision in a Participating Addendum, the Contractor may, at the sole discretion of the Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the State has no liability whatsoever concerning payment for products or services.

**48. Sovereign Immunity**

The State does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

**49. Ownership**

- A. **Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.
- B. **Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Agreement and are ordered as a work product, will be the property of the State and are, by the Agreement, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, intellectual property or other proprietary interest.

**50. Prohibition Against Gratuities**

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.
- B. The Contractor certifies that no elected or appointed official or employee of the State has benefited or will benefit financially or materially from this Agreement. This Agreement may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

**51. Antitrust**

By entering into a Contract, the Contractor agrees to consider, in the Contractor's discretion, all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating to the particular goods or services purchased or acquired by the State under said Contract. For any cause of action taken herein by Contractor, the State, at the State's discretion, may participate in any such action. In the event that Contractor desires to participate in such action, the Contractor shall not oppose the State's request to join such action so long as the interests/positions of the State are not adverse to the interests/positions of the Contractor.

**52. Right to Publish**

- A. Any publicity given to the program, publications or services provided resulting from the Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Agreement prior to its approval by the Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of the Agreement Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

**53. Performance While Dispute is Pending**

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

**54. Hazardous Substances**

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity, upon request, with Material Safety Data Sheets regarding those substances (including mercury).

**55. Customer Satisfaction/Complaint Resolution**

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

**56. Value Added Services**

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**, including relative costs associated with those services.

**57. E-Rate Program**

The Contractor's E-Rate identification number is SPIN#143004340.

E-Rate eligibility depends upon who uses the equipment, how it is used and where it is located. In general terms, equipment located on school property and that is necessary for e-mail and Internet access in classrooms is eligible for E-Rate support.

File server components generally are eligible for discount when used for one or more of the following functions: Domain Name Server, E-mail Server, Communications Server, Terminal Server, Web Server, or DHCP Server.

File server components are not eligible for discount when used for one or more of the following functions: Application or DB Server, Archive or Data Warehouse, Caching Server, Print Server, or Proxy Server.

Generally, network electronics, such as switches and related items are eligible if they are part of a network that delivers information to classrooms. Caching devices are not eligible.

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of Minnesota, Commissioner of Administration, below.

**1. DELL MARKETING L.P.**

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

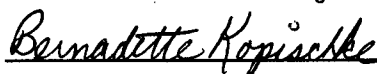
By: 

Title: National Contract Manager

Date: August 26, 2004

**2. MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: 

Title: Acquisition Management Specialist

Date: 8/27/04

**3. COMMISSIONER OF ADMINISTRATION**

Or delegated representative

By: 

Date: 27 AUG 04

## EXHIBIT A - ADDITIONAL WARRANTIES

### **Limited Warranties and Return Policy**

Dell-branded hardware products purchased in the U.S. or Canada come with either a 90-day, 1-year, 2-year, 3-year or 4-year limited warranty, depending on the product purchased. To determine which warranty came with your hardware product(s), see your packing slip or invoice. The following sections describe the limited warranties and return policy for the U.S.

### **What is covered by this limited warranty?**

This limited warranty covers defects in materials and workmanship in your — our end-user customer's — Dell-branded hardware products, including Dell-branded peripheral products.

### **What is not covered by this limited warranty?**

This limited warranty does not cover:

- Software, including the operating system and software added to the Dell-branded hardware products through our factory-integration system, third-party software, or the reloading of software.
- Non-Dell branded and Solution Provider Direct products and accessories
- Problems that result from:
  - External causes such as accident, abuse, misuse, or problems with electrical power
  - Servicing not authorized by Dell
  - Usage that is not in accordance with product instructions
  - Failure to follow the product instructions or failure to perform preventive maintenance
  - Problems caused by using accessories, parts, or components not supplied by Dell
- Products with missing or altered Service Tags or serial numbers
- Products for which Dell has not received payment

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE (OR JURISDICTION TO JURISDICTION). DELL'S RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN HARDWARE IS LIMITED TO REPAIR AND REPLACEMENT AS SET FORTH IN THIS WARRANTY STATEMENT. ALL EXPRESS AND IMPLIED WARRANTIES FOR THE PRODUCT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN TIME TO THE TERM OF THE LIMITED WARRANTY PERIOD REFLECTED ON YOUR PACKING SLIP OR INVOICE. NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, WILL APPLY AFTER THE LIMITED WARRANTY PERIOD HAS EXPIRED. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THIS LIMITATION MAY NOT APPLY TO YOU.

WE DO NOT ACCEPT LIABILITY BEYOND THE REMEDIES PROVIDED FOR IN THIS LIMITED WARRANTY OR FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LIABILITY FOR THIRD-PARTY CLAIMS AGAINST YOU FOR DAMAGES, FOR PRODUCTS NOT BEING AVAILABLE FOR USE, OR FOR LOST DATA OR LOST SOFTWARE. OUR LIABILITY WILL BE NO MORE THAN THE AMOUNT YOU PAID FOR THE PRODUCT THAT IS THE SUBJECT OF A CLAIM. THIS IS THE MAXIMUM AMOUNT FOR WHICH WE ARE RESPONSIBLE.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

### **How long does this limited warranty last?**

This limited warranty lasts for the time period indicated on your packing slip or invoice, except for the following Dell-branded hardware:

- Portable computer batteries carry a 1-year limited warranty.
- Projector lamps carry a 90-day limited warranty.
- Memory carries a lifetime limited warranty.

Monitors carry the longer of either a 3-year limited warranty or the remainder of the warranty for the Dell computer to which the monitor will be connected.

PDAs, MP3 players, earphones, remote inline controls, and AC adapters carry a 1-year limited warranty.

Other add-on hardware carries the longer of either a 1-year limited warranty for new parts and a 90-day limited warranty for reconditioned parts or, for both new and reconditioned parts, the remainder of the warranty for the Dell computer on which such parts are installed.

The limited warranty on all Dell-branded products begins on the date of the packing slip or invoice. The warranty period is not extended if we repair or replace a warranted product or any parts. Dell may change the availability of limited warranties, at its discretion, but any changes will not be retroactive.

**What do I do if I need warranty service?**

Before the warranty expires, please call us at the relevant number listed in the following table. Please also have your Dell Service Tag or order number available.

Web Support: <http://www.support.dell.com/ContactUs/ContactUsHome.aspx?c=us&1=en&s=gen>

Government and Education Customers: 1-800-234-1490

Dell-branded Memory: 1-888-363-5150

**What will Dell do?**

During the 90 days of the 90-day limited warranty and the first year of all other limited warranties: During the 90 days of the 90-day limited warranty and the first year of all other limited warranties, we will repair any Dell-branded hardware products returned to us that prove to be defective in materials or workmanship. If we are not able to repair the product, we will replace it with a comparable product that is new or refurbished.

When you contact us, we will issue a Return Material Authorization Number for you to include with your return. You must return the products to us in their original or equivalent packaging, prepay shipping charges, and insure the shipment or accept the risk if the product is lost or damaged in shipment. We will return the repaired or replacement products to you. We will pay to ship the repaired or replaced products to you if you use an address in the United States (excluding Puerto Rico and U.S. possessions and territories). Otherwise, we will ship the product to you freight collect.

If we determine that the problem is not covered under this warranty, we will notify you and inform you of service alternatives that are available to you on a fee basis.

**NOTE: Before you ship the product(s) to us, make sure to back up the data on the hard drive(s) and any other storage device(s) in the product(s). Remove any confidential, proprietary, or personal information and removable media such as floppy disks, CDs, or PC Cards. We are not responsible for any of your confidential, proprietary, or personal information; lost or corrupted data; or damaged or lost removable media.**

**During the remaining years:** For the remaining period of the limited warranty, we will replace any defective part with new or refurbished parts, if we agree that it needs to be replaced. When you contact us, we will require a valid credit card number at the time you request a replacement part, but we will not charge you for the replacement part as long as you return the original part to us within 30 days after we ship the replacement part to you. If we do not receive the original part within 30 days, we will charge to your credit card the then-current standard price for that part.

We will pay to ship the part to you if you use an address in the United States, (excluding Puerto Rico and U.S. possessions and territories). Otherwise, we will ship the part freight collect. We will also include a prepaid shipping container with each replacement part for your use in returning the replaced part to us.

**NOTE: Before you replace parts, make sure to back up the data on the hard drive(s) and any other storage device(s) in the product(s). We are not responsible for lost or corrupted data.**

#### What if I purchased a service contract?

If your service contract is with Dell, service will be provided to you under the terms of the service agreement. Please refer to that contract for details on how to obtain service.

If you purchased through us a service contract with one of our third-party service providers, please refer to that contract for details on how to obtain service.

#### How will you fix my product?

We use new and refurbished parts made by various manufacturers in performing warranty repairs and in building replacement parts and systems. Refurbished parts and systems are parts or systems that have been returned to Dell, some of which were never used by a customer. All parts and systems are inspected and tested for quality. Replacement parts and systems are covered for the remaining period of the limited warranty for the product you bought. Dell owns all parts removed from repaired products.

#### May I transfer the limited warranty?

Limited warranties on systems may be transferred if the current owner transfers ownership of the system and records the transfer with us. The limited warranty on Dell-branded memory may not be transferred. You may record your transfer by going to Dell's Web site:

If you are an Individual Home Consumer, go to [www.dell.com/us/en/dhs/topics/sbtopic\\_015\\_ccare.htm](http://www.dell.com/us/en/dhs/topics/sbtopic_015_ccare.htm)

If you are a Home Office, Small, Medium, Large, or Global Commercial Customer, go to

[www.dell.com/us/en/biz/topics/sbtopic\\_ccare\\_nav\\_015\\_ccare.htm](http://www.dell.com/us/en/biz/topics/sbtopic_ccare_nav_015_ccare.htm)

If you are a Government, Education, or Healthcare Customer, or an Individual Home Consumer who purchased through an Employee Purchase Program, go to [www.dell.com/us/en/pub/topics/sbtopic\\_015\\_ccare.htm](http://www.dell.com/us/en/pub/topics/sbtopic_015_ccare.htm)

If you do not have Internet access, call your customer care representative or call 1-800-624-9897.

#### Total Satisfaction Return Policy (U.S. Only)

We value our relationship with you and want to make sure that you're satisfied with your purchases. That's why we offer a Total Satisfaction return policy for most products that you, the end-user customer, purchase directly from Dell. Under this policy, you may return to Dell products that you purchased directly from Dell for a credit or a refund of the purchase price paid, less shipping and handling and applicable return fees as follows:

**New Hardware Products and Accessories:** Unless you have a separate agreement with Dell, all hardware, accessories, peripherals, parts and unopened software still in its sealed package, excluding the products listed below, may be returned within twenty-one (21) days from the date on the packing slip or invoice. New PowerEdge™, PowerConnect™ and PowerVault™ products may be returned within thirty (30) days from the date on the packing slip or invoice except that new PowerEdge™ SC servers and n series products purchased from the Small and Medium Business Sales Division may only be returned within fourteen (14) days from the date on the packing slip or invoice. To return applications software or an operating system that has been installed by Dell, you must return the entire computer. A different return policy applies to nondefective products purchased through Dell's Software and Peripherals division by customers of our Small and Medium Business divisions. Those products may be returned within twenty-one (21) days from the date on the packing slip or invoice, but a fifteen percent (15%) return fee will be deducted from any refund or credit. The Total Satisfaction Return Policy and Software and Peripherals division return policy are not available for Dell/EMC storage products, EMC-branded products, Unisys-branded products, PowerVault™ 160T tape libraries, enterprise software, non-Dell branded enterprise products, software and/or software licenses purchased under any type of volume purchase agreement or any non-Dell customized hardware and/or software product(s).

**Reconditioned or Refurbished Dell-Branded Hardware Products and Parts:** All reconditioned or refurbished PowerEdge™, PowerConnect™ and PowerVault™ products may be returned within thirty (30) days from the date on the packing slip or invoice. All other reconditioned or refurbished Dell-branded hardware products and parts may be returned within fourteen (14) days of the date on the packing slip or invoice.



**How to Return:** To return products, e-mail or call Dell customer service to receive a Credit Return Authorization Number within the return policy period applicable to the product you want to return. You must obtain a Credit Return Authorization Number in order to return the product. See "Contacting Dell" or "Getting Help" in your customer documentation (or [www.dell.com/us/en/gen/contact.htm](http://www.dell.com/us/en/gen/contact.htm)) to find the appropriate contact information for obtaining customer assistance. You must ship the products to Dell within five (5) days of the date that Dell issues the Credit Return Authorization Number. You must also return the products to Dell in their original packaging, in as-new condition along with any media, documentation, and all other items that were included in the original shipment, prepay shipping charges, and insure the shipment or accept the risk of loss or damage during shipment.

**Note:** Before you ship the product(s) to us, make sure to back up the data on the hard drive(s) and any other storage device(s) in the product(s). Remove any confidential, proprietary or personal information, removable media, such as floppy disks, CDs, or PC Cards. We are not responsible for any of your confidential, proprietary or personal information; lost or corrupted data; or damaged or lost removable media.

Limited Warranty for Dell-Branded Ink and Toner Cartridges (U.S. and Canada Only)

Dell Inc. warrants to the original purchaser of genuine Dell-branded toner cartridges that they will be free from defects in material and workmanship for the life of the cartridge and that for genuine Dell-branded ink cartridges they will be free from defects in material and workmanship for two years beginning on the date of invoice. If this product proves defective in either material or workmanship, it will be replaced without charge during the limited warranty period if returned to Dell. You must first call our toll-free number to get your return authorization. In the U.S., call 1-800-822-8965; in Canada, call 1-800-387-5757. If we are not able to replace the product because it has been discontinued or is not available, we will either replace it with a comparable product or reimburse you for the cartridge purchase cost, at Dell's sole option. This limited warranty does not apply to ink or toner cartridges that have been refilled, improperly stored, or due to problems resulting from misuse, abuse, accident, neglect, mishandling, incorrect environments, or wear from ordinary use.

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE (OR JURISDICTION TO JURISDICTION). DELL'S RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN HARDWARE IS LIMITED TO REPLACEMENT AS SET FORTH IN THIS WARRANTY STATEMENT. FOR CANADIAN CUSTOMERS, EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS WARRANTY STATEMENT, DELL DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, FOR THE PRODUCT. FOR U.S. CUSTOMERS, ALL EXPRESS AND IMPLIED WARRANTIES FOR THE PRODUCT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE LIMITED IN TIME TO THE TERM OF THIS LIMITED WARRANTY. NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, WILL APPLY AFTER THE LIMITED WARRANTY PERIOD HAS EXPIRED. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES OR CONDITIONS, OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY OR CONDITION LASTS, SO THIS LIMITATION MAY NOT APPLY TO YOU. THIS WARRANTY COVERAGE TERMINATES IF YOU SELL OR OTHERWISE TRANSFER THIS PRODUCT TO ANOTHER PARTY.

DELL DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES PROVIDED FOR IN THIS LIMITED WARRANTY OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LIABILITY FOR THIRD-PARTY CLAIMS AGAINST YOU FOR DAMAGES, FOR PRODUCTS NOT BEING AVAILABLE FOR USE, OR FOR LOST DATA OR LOST SOFTWARE. DELL'S LIABILITY WILL BE NO MORE THAN THE AMOUNT YOU PAID FOR THE PRODUCT THAT IS THE SUBJECT OF A CLAIM. THIS IS THE MAXIMUM AMOUNT FOR WHICH DELL IS RESPONSIBLE.

SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

**Limited Warranty for Dell-Branded Tape Media (U.S. and Canada Only)**

Dell warrants to you, the end-user customer, that this product will be free from defects in material and workmanship for one year from the invoice date, if properly used and maintained. If this product proves defective in either material or workmanship, it will be replaced without charge if returned to Dell. You must first call our toll-free number to get your return authorization. In the U.S., call 1-800-822-8965. In Canada, call 1-800-387-5757. If we are not able to replace the product because it has been discontinued or is not available, we will replace it with a comparable product. This warranty does not apply to failure of the product resulting from misuse, abuse, accident, neglect or mishandling, improperly adjusted or maintained drives, incorrect environments or wear from ordinary use.

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE (OR JURISDICTION TO JURISDICTION). DELL'S RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN HARDWARE IS LIMITED TO REPLACEMENT AS SET FORTH IN THIS WARRANTY STATEMENT. FOR CANADIAN CUSTOMERS, EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS WARRANTY STATEMENT, DELL DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, FOR THE PRODUCT. FOR U.S. CUSTOMERS, ALL EXPRESS AND IMPLIED WARRANTIES FOR THE PRODUCT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN TIME TO THE TERM OF THIS LIMITED WARRANTY. NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, WILL APPLY AFTER THE LIMITED WARRANTY PERIOD HAS EXPIRED. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES OR CONDITIONS, OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY OR CONDITION LASTS, SO THIS LIMITATION MAY NOT APPLY TO YOU. THIS WARRANTY COVERAGE TERMINATES IF YOU SELL OR OTHERWISE TRANSFER THIS PRODUCT TO ANOTHER PARTY.

DELL DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES PROVIDED FOR IN THIS LIMITED WARRANTY OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LIABILITY FOR THIRD-PARTY CLAIMS AGAINST YOU FOR DAMAGES, FOR PRODUCTS NOT BEING AVAILABLE FOR USE, OR FOR LOST DATA OR LOST SOFTWARE. DELL'S LIABILITY WILL BE NO MORE THAN THE AMOUNT YOU PAID FOR THE PRODUCT THAT IS THE SUBJECT OF A CLAIM. THIS IS THE MAXIMUM AMOUNT FOR WHICH DELL IS RESPONSIBLE.

SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

## **EXHIBIT B - COMPLAINT RESOLUTION**

Dell relies on direct feedback from customers through face-to-face, telephone, email and facsimile communication with our dedicated account management team. *Voice of the Customer* is a key initiative at Dell that allows us to maintain the high quality of customer service that has garnered nationwide recognition. This initiative causes us to promptly review and address every service, sales, equipment or contractual issue.

All levels of management work with our customers to ensure that we resolve issues in a timely and complete manner. An email sent to Michael Dell is visible to every level of our company's senior management and is responded to with utmost urgency. While the issue resolution procedures described in this section remain our preferred way of resolving customer issues, the option of contacting Michael Dell ensures a consistent focus on the *Voice of the Customer* at all levels of the company.

Dell also offers Advanced Escalation and Problem Resolution Services that exceed the standard approaches described here (as described in Exhibit C - Value Added Services).

### **A. Customer Service**

Dell's account team provides an escalation path for customer satisfaction issues, from the sales representative to the director of the customer's region.

The Dell Sales Representative (SR), currently assigned to the customer's account, is the primary point of contact for daily business. Any issues related to configuration, pricing, quotes, or purchase orders should be communicated initially to the SR or the Account Executive (AE) for resolution and followed up in writing via email with a copy to the Inside Sales Manager (ISM).

Should the SR be temporarily unavailable, a backup representative will assist the customer. In the rare event that both the SR and the designated backup are unavailable, the ISM is available to handle the issue. Path of escalation for sales issues is as follows:

1. Sales Representative
2. Account Executive
3. Inside Sales Manager
4. Regional Sales Manager
5. Sales Director or Vice President.

If a resolution cannot be reached, the escalation process is then directed to the Public Sector General Manager, Brian Wood.

When necessary, Dell assigns a Project Manager (PM) as a single point of contact for customized deployment and installation. To facilitate timely response to problems during critical periods, the Dell PM will monitor the progress of the rollout and/or installation in conjunction with the Dell Service Field PM.

All operational issues should be communicated to the PM as soon as possible. Initial communication may be email or telephone based on priority of the issue. All telephone communications should be followed by email documentation. The PM will record the issue and coordinate involvement of appropriate resources to assess the issue and define an action plan for resolution. The action plan will be communicated to the project team. The weekly progress report will include status of issues and related action plans.

### **B. Equipment**

Dell's reputation for industry-leading service and support starts with the high quality of our equipment. When support is necessary, the direct model enables us to quickly respond based on specific information provided by our customers.

This information, combined with our knowledge of equipment (as original manufacturer), ensures our premier status. The technical support process is as follows:

1. Technical support calls are routed within Dell by use of specific 800 numbers, or service and support options from a customized 800 number.
2. Technical issues are handled in the main Technical Support queues. Calls are routed to the next available technician. This technician gathers the required information from the caller, including the system ID (Service Tag) number and a description of the problem. This Level One (L1) representative uses several tools and knowledge based aids to diagnose and resolve the issue.
3. If the problem requires a more advanced level of support, the Level One representative consults with a Level Two (L2) technician. The Level Two Technician uses additional tools in conjunction with their expertise to resolve many of the issues. If the issue is not resolved by consulting with the Level Two Technician, the Level Two Technician takes ownership of the issue for further research.
4. Once the Level Two Technician has exhausted the resources and has still not resolved the issue, the issue is escalated to the International Product Support (IPS) for resolution. The IPS engineer is now responsible for resolving the issue. The IPS engineer will work with vendors, manufacturers and engineers to resolve the issue.
5. The customer can utilize the Dell 800 number to receive the latest status on the service call for that specific unit.
6. Customer calls are placed to the Dell Technical Support group through an 800 number. When an on-site service call is required, Dell ships the part required. A technician is dispatched to pick up the part, go to the customer's site, replace the defective part and ship it to Dell. Escalation procedures are built into the process to insure response times are met.
7. Dell developed Dell's Product Support (DPS) for tracking all service requests and dispatching on-site engineers. DPS is Dell's service history database. The Dell Customer Service Delivery (CSD) technician can instantly see the end-user's model number and configuration in DPS by simply asking for the 5-character service tag located on the back of each Dell system. Armed with this information, the technician may begin any necessary troubleshooting procedures with the end user.
8. DPS shows the CSD technician the complete service history of that particular PC. The CSD technician must log entries into DPS each time there is communication with a customer, including nature of the problem and troubleshooting steps taken. So, each call into Technical Support is documented. The CSD technician uses the service history to determine whether a problem needs escalation or needs to be researched further.
9. Dell's service provider is linked into DPS, so if a problem in the field requires on-site attention, the dispatch is seamless.
10. Finally, DPS is the primary tool for diagnosing and attacking early life failures of new products and measuring a product's reliability.

### **C. Billing Issues**

Dell emphasizes quick response to billing issues with an immediate and concise approach:

1. Each account with payment terms is assigned an Accounts Receivable Specialist. Billing issues can be directed to that person
2. If no resolution, issues are escalated to the Accounts Receivable Team Lead
3. If no resolution, issues are then escalated to the Accounts Receivable Supervisor.
4. The next level of escalation for billing issues is the segment Controller, the most senior finance representative associated with billing and collections.

#### **D. Contractual Issues**

In addition to the standard mechanisms for resolving service, equipment or billing issues, Dell Public Sector maintains a highly experienced contract management team. This team is staffed with experts who understand the unique requirements of SLG, K-12 and HIED customers. Working as a part of the operations organization, this team provides both first-response and point-of-escalation support.

##### **1. First-Response**

A tenet of the direct model encourages a single point of accountability. This means that while Dell provides a documented method for responding to customer issues, every person at Dell is encouraged to take ownership of their resolution. As an example, while the contracts team primarily exists to assure contract compliance, it often serves as a first-response point with customers. The contract manager listens to customers and connects them with our streamlined customer service, equipment and billing processes. The process will resolve the issue to the satisfaction of the customer without further engagement of the contracts team. The contracts team often follows up to ensure the problem was solved to the customer's satisfaction.

Contract managers are also charged with pro-active monitoring of Dell behaviors to assure contract compliance. This ensures that the entire delivery and support organization understands Dell's obligations from day one of a new contract.

Examples of the first-response function under the current WSCA contract include

- a. Answering end-customer questions about the overall WSCA program and how Dell's offering meets their needs under this program.
- b. Escalating service complaints to the appropriate technical or customer service organization.
- c. Routing equipment support questions as appropriate.
- d. Ensuring that repeat support issues are escalated inside the product and support organizations.
- e. Connecting customers with the appropriate billing representative and managing tools that ensure billing is in accordance with contractual requirements.

#### **E. Point of Escalation**

Some complaints are harder to resolve than others. If a customer has engaged the appropriate customer service, equipment and billing resolution process and is dissatisfied with the results, the contract management team can act as a level of escalation by:

1. Supporting a customer's unique requirements for a special project.
2. Escalating customer questions and complaints to the NASPO | WSCA Administrator.
3. Working with customers and Dell internal resources to ensure expectations are set and met.
4. Ensuring the decisions of the NASPO | WSCA Administrator are implemented on future orders.

Contract management can be considered an administrative function. Dell's ability to staff an industry-leading contract management team is enhanced by the focus of this team on issues that improve overall customer experience. Active engagement in resolving customer concerns is integral to this role. The contract management team ensures that these concerns get to the right people inside Dell, then follows up to ensure they do not become contractual issues.

## **EXHIBIT C - VALUE ADDED SERVICES**

Contact the Contractor for more details on these services and their related costs.

### **A. Deployment Services**

Dell delivers a comprehensive, end-to-end solution for deployment needs, providing improved resource utilization, a single point of accountability and exceptional execution. Dell deployment services allow customers to focus on more strategic projects, helping save both time and effort while reducing Total Cost of Ownership (TCO). Dell provides the following services:

#### **1. Custom Factory Integration**

Dell's Custom Factory Integration (CFI) service provides a range of custom built, factory-installed solutions to help eliminate installation hassles. After determining the customer's exact needs, Dell performs the custom configuration during the initial system build. It's a one-touch, high quality, custom integration; which means that systems are not twice built and twice shipped. This ensures that Dell products are custom configured to the customer's specification and delivered from Dell's ISO 9001-certified factory. Dell currently offers the following CFI services:

- a. Software Integration – Custom configuration and installation of software.
- b. Image Management Services – A complete image deployment solution.
- c. Hardware Integration – Installation of industry-standard hardware components.
- d. X-Image – A client software service designed to develop, deploy and manage a hardware independent custom image that will run across all Dell clients' systems (Optiplex, Latitude and Precision). This means that Dell can help reduce significantly the time and cost associated with custom image management.
- e. Asset Management Services
  - Asset Security Service
  - Asset Tag Service
  - Asset Tracking Service
- f. CFI Client Support Services
  - Parts Replacement Program
  - Image Recovery Products

### **B. Delivery Options**

All Dell systems are built to customer specifications and shipped directly to the end user. The following shipping options are available:

- 1. 3- to 5-Day Ground Shipping – Most cost-effective shipping option.
- 2. 2-Day Shipping – Timely shipping at a reasonable price.
- 3. Next-Day Shipping – When delivery is critical to customer deadlines.

Dell also offers customer-selected third-party carrier shipping options at the customer's discretion and expense.

### **C. Custom Delivery Services**

Once the systems are built, Dell can arrange a number of custom delivery services to best meet customer work environment and staffing constraints. Delivery services are described below; each service assumes the use of a Dell-selected carrier.

#### **1. Inside Delivery**

- a. Single Destination Delivery
- b. Inner Office Distribution
- c. Unpacking of Boxes
- d. Destination Bundle
- e. Package Removal Bundle

**2. Scheduled Delivery Services**

With scheduled delivery services, customers benefit from a predictable and/or precise delivery cycle to specific locations. Projects may include recurring deliveries that typically involve a repetitive schedule or clearly defined deliveries with start and end dates. Choices available include:

- a. Date-Specific Delivery
- b. Time-Specific Delivery
- c. Weekday-Specific Delivery
- d. After-Hours Delivery
- e. Weekend Deliveries

**3. Pre-Delivery Services**

Pre-delivery services are performed to prepare shipments for delivery, based on the specific receiving environment.

- a. Palletization
- b. Standard Pallet
- a. Custom Pallet
- b. Order Consolidation
- c. Specific Truck Size
- d. Lift-Gate/Tail-Gate Service
- e. Advance Delivery Notice

**4. Destination Services**

- a. De-Palletization

**D. Custom Installation Services**

Dell has streamlined standard installation services to enable customers to easily choose the right package to meet deployment needs, while keeping internal customer resources focused on strategic initiatives. Our installation packages provide customers with a choice of service offerings ranging from system set up and test to comprehensive install/de-install with user data transfer. Dell's flexibility as a result of the direct model allows custom installation services to be designed around unique customer requirements. Whether standard or custom, Dell manages the installation scheduling process and is the single point of accountability.

- 1. PC Install
- 2. PC Install with data transfer
- 3. Server and Storage Installation Service
- 4. Pre-Install Site Configuration
- 5. Server and Storage Installation (with Factory-Installed NOS)
- 6. Server and Storage and NOS Installation
- 7. Basic Server Set-Up (with Factory-Installed NOS)
- 8. Novell ICS Basic Server Set-Up (with Factory-Installed NOS)
- 9. Windows NT or Novell NetWare Operating System Installation
- 10. Server Rack Mounting

**E. Standard Custom Support Services**

- 1. Response Time
  - a. 7x24 Telephone Support
  - b. 30-Day Getting Started Help line
  - c. Next Business Day, Onsite Services

**F. Expanded Customer Support Services**

- 1. Same-Day, On-site Services
  - a. 4-Hour Response Service
  - b. 8-Hour Response Service
  - c. 2-Hour Response Service
  - d. 2-Hour Response Service, 6-Hour Repair

2. **Client Gold Technical Support**

Dell's Gold Technical Support provides advanced level of technical support expertise for Dell desktops, notebooks and workstations. Gold Technical Support combines rapid response and resolution with advanced technical assistance and account management to give customers a single point of contact for personal system support. Key features are:

- a. Access to Dell's Gold Queue
- b. Technical Account Manager (TAM) Services
- c. Seamless Escalation Support
- d. Quarterly Service Performance Report

3. **Premier Enterprise Support**

- a. Platinum Enterprise
- b. Gold Enterprise
- c. Silver-Same Day Basic
- d. Bronze Next-Business-Day (NBD) Basic
- e. Software Support for Servers and Storage
- f. OpenManage™ Subscription Service

**G. Software Support**

Dell's software support services provide toll-free priority-access operating system support from experienced technicians for Microsoft and Novell operating systems. We also offer extensive application support for over 100 different types of client applications.

- 1. Standard Software Support
- 2. Client Software Support
- 3. Advanced Software Support

**H. Dell's Premier Access – Self-Maintainer Program, Tier I and Tier II**

The Dell Premier Access Program is a service and support program designed specifically for Information Service professionals who have technical expertise in diagnosing and servicing computer systems. With benefits like fast access to service and service part dispatches and direct access to advanced level technical support, the Premier Access Program helps provide the knowledge, tools and services necessary to efficiently maintain OptiPlex, Dimension, Latitude, PowerEdge and Workstation systems.

Whether the customer supports their own Dell systems, uses a help desk to dispatch service, or contracts with others for the maintenance of their Dell equipment, the Premier Access Program helps contain service and support costs and provides direct access to the exact level of service and support required.

**I. Keep Your Hard Drive Services**

The Dell Keep Your Hard Drive services gives participants the option of retaining a failed hard drive (that is covered by Dell warranty), while receiving a replacement hard drive. Replacement hard drives may be new or reconditioned and supported as new. This service provides control over sensitive and confidential data contained on the hard drive and allows customers to determine the method of disposal for the failed hard drive. Key benefits include:

- 1. Greater Security
- 2. Complete Control
- 3. Data Privacy

**J. Training and Certification**

- 1. Delivery Methods
  - a. E-learning
  - b. Instructor-led
- 2. IT Professional Training
- 3. Education Professional Training
- 4. Productivity at Work Courses